

DOWNTOWN CHANDLER ENHANCED MUNICIPAL SERVICES AGREEMENT FOR FISCAL YEAR 2022-2023

THIS AGREEMENT is entered into effective July 1, 2022, by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City"), and DOWNTOWN CHANDLER COMMUNITY PARTNERSHIP, an Arizona non-profit corporation (the "DCCP").

RECITALS

WHEREAS, the City desires to obtain certain enhanced municipal services for a portion of the downtown area of Chandler, and, pursuant to the authority granted under Section 48-575 of the Arizona Revised Statutes, has established the Downtown Chandler Enhanced Municipal Services District by Resolution No. 3905 to fund such services within the geographic area described therein and depicted in attached Exhibit "A" (the "District"), and has established an assessment for properties within the District to fund such enhanced services; and

WHEREAS, the DCCP is willing and able and desires to provide such enhanced municipal services for the District;

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties contained herein, each of them does hereby covenant and agree with the other as follows:

SECTION 1 **SCOPE OF SERVICES**

1.1. **Purpose.** The purpose of this Agreement is to establish and carry out a strategy for providing enhanced municipal services within the District, including marketing and promotion, safety and beautification, and management assistance so as to increase the economic and civic value of the downtown area of Chandler.

1.2. **Description of Services.** During the term of this Agreement and in order to further the purpose of this Agreement, the DCCP shall perform the enhanced municipal services described in attached Exhibit "B", which at a minimum shall include the services described in Sections 1.3 through 1.5 below.

1.3. **Marketing and Promotions.** The DCCP shall promote the District, including all of its individual market and geographic segments, through the development and implementation of a, including but not limited to: publications; facilitating the production by others of special events and festivals; and advertising and publicity.

1.4. **Safety and Beautification.** The DCCP shall implement programs that clean the physical environment of the District, thereby enhancing public safety services. In addition, the DCCP shall provide supplemental projects including street banners, informational directories, building light lines and annual holiday light displays. Additionally, the DCCP shall regularly communicate with the City on general maintenance and beautification to ensure a well-maintained and appealing atmosphere.

1.5. **Downtown Management Assistance.** The DCCP shall be the point of contact on a daily basis for issues affecting District ratepayers so that matters can be coordinated with the City and addressed appropriately.

1.6. **Compliance with Laws.** In providing any and all of the services described in this Agreement, the DCCP shall comply with all applicable laws, ordinances and codes of the United States, the State of Arizona, and the City of Chandler.

1.7. **General Administration.** The DCCP shall maintain high standards in the conduct of its internal and external business affairs, and shall maintain a high public integrity.

1.8. **Coordination With The City.** In order that this Agreement may be considered for renewal for fiscal year 2022-2023, the DCCP shall:

- a. Provide, for approval by the City, (i) any recommended modifications to the description of the scope of services described in attached Exhibit "B" or otherwise described in this section 1 of this Agreement, (ii) a detailed operating budget that meets the modified scope of services, (iii) an accounting of anticipated and existing carryforward and how it will be utilized during the timeframe of this agreement. The proposed modifications and the operating budget including carryforward shall be submitted to the City by March 24, 2022 and the City shall take action on both items on June 9, 2022.
- b. Provide, for the term of this Agreement, the DCCP shall provide two progress reports to the City in the months of January and June of each year, to include information on relevant topics such as events, attendance, hours devoted to clean and safe activities, marketing reach, etc.
- c. Provide monthly financial statements and an independent audit report (every other year) of expenditures and program compliance within one hundred twenty (120) days following the end of the fiscal year covered by this Agreement and within ninety (90) days following the termination of this Agreement. The year the audit is not conducted, a financial review will be completed. The City may also choose to perform its own audit. The financial statements and audit shall utilize fund accounting and distinguish between restricted and unrestricted revenues per the Financial Accounting Standards Board Accounting Standards Codification (ASC) 958 as follows:

1. *Unrestricted Net Assets:* Those funds that have no donor or contributor stipulations. These include member dues and prior savings from pre-District fundraising done by DCCP. If this contract is not renewed, all funds in this category are retained by the DCCP.
2. *Temporarily Restricted Net Assets:* Those funds that have donor-imposed restrictions that can be fulfilled in one of two ways – passage of a defined period of time (time restricted) or by performing defined activities (purpose restricted). This includes assessment revenues, the voluntary City contribution, sponsorships, and event income for those events funded and/or staffed by the District. Temporarily restricted assets may only be used for District purposes in line with the duties outlined in Sections 1.3 through 1.5, not general DCCP purposes. Any monies

carried forward in to the next fiscal year from this category, will remain in this classification. If this contract is not renewed, all funds in this category must be returned to the City.

3. *Permanently Restricted Net Assets:* Those funds that are donated for a specific and restricted use, such as an endowment. Currently, no such assets exist in the District and disposition of any funds secured during the term of this contract will be decided between the parties.

d. Provide assistance to the Maricopa County Assessor, the Maricopa County Treasurer, and the City in the assessment of the District. DCCP shall be responsible for maintaining an accurate roll of land use and property ownership information, the development of proposed assessment lists, and the scheduling of events leading to assessment hearings and other appropriate public hearings and notifications to be conducted during the fiscal year covered by this Agreement for the next fiscal year.

1.9. **Continuance of City Service Levels.** The City shall continue to provide within the District the same level of municipal services as described in attached Exhibit "C".

SECTION 2

EFFECTIVE DATE

2.1. **Term.** This Agreement shall be for the City's fiscal year beginning July 1, 2022 and ending June 30, 2023.

SECTION 3

COMPENSATION

3.1. **Remittance of Assessments.** The City agrees to remit to the DCCP, for the services to be rendered by it under this Agreement, an amount equal to the annual assessment of the Chandler Enhanced Municipal Services District as collected and distributed by the Maricopa County Treasurer for fiscal year 2022-2023. Payments by the City shall be made to the DCCP when received by the City from the Maricopa County Treasurer.

3.2. **Voluntary Contribution.** The City shall pay to the DCCP a voluntary contribution of \$118,804 (One hundred eighteen thousand, eight hundred and four dollars) in two equal installments, the first on or before July 15, 2022, and the second on or before January 15, 2023.

3.3. **Reserve Fund.** The DCCP shall establish a contingency fund as a reserve to use as operating funds for fiscal year 2022-2023. The reserve will be sufficient enough to use as operating funds until such time that the City receives assessment funds from Maricopa County. The DCCP Board may set and carry a reserve level not to exceed 20% of that years' assessment. If the DCCP Board wishes to accumulate funds for a specific project in addition to the 20% reserve, a written proposal may be submitted to the City for consideration. Upon City approval, Temporarily Restricted Funds may be earmarked for the project; however, if the project does not move forward in the agreed upon timeframe, the monies will be returned to the general Temporarily Restricted Funds and the reserve spent down.

SECTION 4

INSURANCE AND INDEMNIFICATION

4.1 **Indemnification:** The DCCP agrees to indemnify, defend and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs or actions of any kind and nature resulting from personal injury (including bodily injury and death) to any person, including employees of the DCCP or any subcontractor or consultant of the DCCP employed by the DCCP, or damage to any property, arising or alleged to have arisen out of the negligent performance of the DCCP for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. It is the intention of the parties to this contract that the City, its Mayor and Council, appointed boards and commissions, officials, officers and employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

4.2 **Insurance:** The DCCP shall provide insurance coverage in the amount and type, and subject to the conditions, as set forth in attached Exhibit "D".

SECTION 5

TERMINATION

5.1. **Automatic Termination.** This Agreement shall terminate automatically if either of two conditions applies:

- a. At the end of the fiscal year covered by this Agreement if the DCCP budget is not approved and/or renewal of the Agreement is not approved by the Chandler City Council.
- b. The DCCP ceases to exist.

5.2. **Optional Termination.** Either party may terminate this Agreement during its term upon giving the other party at least sixty (60) days written notice of such desired termination.

5.3. **Effect of Early Termination.** Upon early termination of this Agreement, the assets of the DCCP shall become the assets of the City, with the exception of the verified Unrestricted Net Assets, and the City's voluntary contribution shall be terminated immediately.

SECTION 6

MISCELLANEOUS PROVISIONS

6.1. **Binding Agreement; Assignment:** This Agreement shall be binding upon the successors and assigns of the parties. However, no party shall have the right to assign this Agreement or any interest in this Agreement without the prior written consent of the other party.

6.2. **Notices:** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, return receipt requested, pre-paid to the parties as specified below.

If to the City: City of Chandler
 City Manager's Office
 Mail Stop 605
 P.O. Box 4008
 Chandler, AZ 85244-4008

 City of Chandler
 Cultural Development
 Mail Stop 498
 P.O. Box 4008
 Chandler, AZ 85244-4008

If to the DCCP: Downtown Chandler Community Partnership
 100 W. Boston St., Ste. 5
 Chandler, AZ 85225

6.3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

6.4. **Waiver.** No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

6.5. **Attorney's Fees.** In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorney's fees, which shall be determined by the court and not by the jury.

6.6. **Exhibits.** The exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

6.7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the City has caused this agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and DCCP has signed the same on or as of the day and year first written above.

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Kevin Hartke, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney TA

**DOWNTOWN CHANDLER COMMUNITY
PARTNERSHIP**, an Arizona non-profit corporation

By: _____
Jamie Hoffman, Chair

ATTEST:
